INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	8
Conclusion	16

CITATIONS

Cases:

Barnhart v. *Western Maryland Ry. Co.*, 128 F. 2d 709, certiorari denied, 317 U. S. 671	13
Bell et al. v. *United States*, No. 10432, C. C. A. 9	6
Belknap v. *Schild*, 161 U. S. 10	12
Bock v. *Perkins*, 139 U. S. 628	12
Boyd v. *United States*, 116 U. S. 616	10, 16
Buck v. *Colbath*, 3 Wall. 334	10
Bullard v. *Cisco*, 290 U. S. 179	16
Burdeau v. *McDowell*, 256 U. S. 465	16
Cammeyer v. *Newton*, 94 U. S. 225	12
Chaskin v. *Thompson*, 143 F. 2d 566	12
Cooper v. *O'Connor*, 99 F. 2d 135, certiorari denied 305 U. S. 642	12, 13
Dowling Brothers v. *Andrews*, 19 F. 2d 961	10, 12
Feibelman v. *Packard*, 109 U. S. 421	13
First National Bank v. *Williams*, 252 U. S. 504	9
Florida Central and Peninsular R. R. Co. v. *Bell*, 176 U. S. 321	16
Gay v. *Ruff*, 292 U. S. 25	13
Germania Ins. Co. v. *Wisconsin*, 119 U. S. 473	13
Goldman v. *American Dealers Service*, 135 F. 2d 398	10, 13
Gully v. *First National Bank*, 299 U. S. 109	9, 13, 14
Howard v. *United States*, 184 U. S. 676	12
Hunt v. *Evans*, 10 F. 2d 892	13
Little v. *Barreme*, 2 Cranch 170	12
Louisville & Nashville R. R. v. *Mottley*, 211 U. S. 149	9
McNutt v. *General Motors &c Corp.*, 298 U. S. 178	16
Mitchell v. *Harmony*, 13 How. 115	12
Philadelphia Co. v. *Stimson*, 223 U. S. 605	11
Poindexter v. *Greenhow*, 114 U. S. 270	10
Puerto Rico v. *Russell & Co.*, 288 U. S. 476	9, 13
Robinson v. *Anderson*, 121 U. S. 522	15
Shulthis v. *McDougal*, 225 U. S. 561	9

Cases—Continued	Page
Starin v. *New York*, 115 U. S. 248	9
Taylor v. *DeHart*, 22 F. 2d 206, dismissed 274 U. S. 726	11
Tennessee v. *Union & Planters' Bank*, 152 U. S. 454	13
Tracy v. *Swartwout*, 10 Pet. 80	12
Tunstall v. *Brotherhood*, 323 U. S. 210	12
United States v. *Bell*, 48 F. Supp. 986	5
Viles v. *Symes*, 129 F. 2d 828, certiorari denied, 317 U. S. 633	11
Walker v. *Collins*, 167 U. S. 57	10
Walters v. *Payne*, 292 Fed. 124, certiorari denied, 263 U. S. 715	11
Statutes:	
Constitution, Art. III § 2	13
Fourth Amendment to the Constitution	10, 11
Fifth Amendment to the Constitution	10, 11
Act of June 15, 1917, Sec. 4, 40 Stat. 219, 50 U. S. C. 34	3
Act of August 27, 1935, c. 740, § 201 (49 Stat. 877, 18 U. S. C. 53a)	16
Section 24 (1) (a) of the Judicial Code, 28 U. S. C. 41 (1) (a)	2, 9, 13
Section 37 of the Judicial Code, 28 U. S. C. 80	2, 15
5 U. S. C. 300, 300a	6, 11
Miscellaneous:	
Mechem, *Public Officers* (1890) § 770, 778	10
Throop, *Public Officers* (1892) § 724	10

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 344

ARTHUR L. BELL, ET AL., PETITIONERS

v.

R. B. HOOD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of California, Central Division (R. 145–159), is not officially reported. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit (R. 168–178) is reported in 150 F. 2d. 96.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 7, 1945 (R. 179). The petition for a writ of certiorari was filed on August

20, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTION PRESENTED

Whether the district court erred in dismissing the instant suit on the ground that it does not arise "under the Constitution or laws of the United States" within the meaning of Section 24 (1) (a) of the Judicial Code, 28 U. S. C. 41 (1) (a).

STATUTES INVOLVED

Section 24 (1) (a) of the Judicial Code, 28 U. S. C. 41 (1) (a), provides:

> The district courts shall have original jurisdiction as follows:
>
> First. Of all suits of a civil nature at common law or in equity, * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States * * *.

Section 37 of the Judicial Code, 28 U. S. C. 80, provides in part:

> If in any suit commenced in a district court * * * it shall appear to the satisfaction of the said district court, at any time after such suit has been brought * * *, that such suit does not really and substantially involve a dispute or con-

> troversy properly within the jurisdiction of said district court, * * * the said district court shall proceed no further therein, but shall dismiss the suit * * * and shall make such order as to costs as shall be just.

STATEMENT

Following an extensive investigation by the Federal Bureau of Investigation ("F. B. I."), the Federal Grand Jury for the Southern District of California returned a secret indictment (No. 15759) on December 17, 1942, in which the twelve petitioners, leaders and members of a voluntary association known as "Mankind United," were charged with conspiracy to commit sedition, a felony under the Act of June 15, 1917, Sec. 4, 40 Stat. 219, 50 U. S. C. 34 (R. 4, 6–8, 34). Warrants for the arrest of all the petitioners, to be executed either by the United States Marshal or by F. B. I. agents, were immediately issued by the United States District Court for the Southern District of California, and were handed to F. B. I. agents in that District for service (R. 35). Petitioners Bell, Burkey, Gloeckler, and Miller resided outside the Southern District of California and, as to them, a return of *non est* was made by the United States Marshal at Los Angeles on the afternoon of December 17, 1942 (R. 4, 7, 35). The United States Attorney then advised the re-

spondent R. B. Hood, F. B. I. Special Agent in Charge in Los Angeles, of the return of the warrants for the arrest of petitioners and directed their apprehension, authorizing the arrest of those beyond the Southern District as fugitives for whom warrants were outstanding (R. 35).

Thereupon, the respondent Hood notified the San Francisco Office of the F. B. I. by teletype of the return of the indictment, the issuance of the warrants, their delivery to Hood, the returns *non est* as to petitioners Bell, Burkey, Gloeckler, and Miller, and the directions from the United States Attorney for the arrest of petitioners (R. 35–36, 44, 56, 62, 66). In compliance with these directions, F. B. I. agents from the San Francisco office, respondents herein, arrested these four petitioners at San Francisco, Oakland, Denair, and Mountain View, respectively,[1] at approximately 7:30 A. M., December 18, 1942 (R. 44, 56, 62, 66). At the same time, the remaining eight petitioners were arrested by other F. B. I. agents (also respondents herein) at San Diego, Los Angeles, and Fresno, all within the Southern District of California, under the warrants of arrest issued by the district court (R. 69–70, 73, 76, 78–79, 82, 86–87, 89, 93).[2] In connection with each arrest, the ar-

[1] All these points are in California, but outside the Southern Judicial District.

[2] The F. B. I. timed all the arrests for 7:30 A. M. on December 18, 1942, in order to avoid the results of premature publicity (R. 86, 94).

resting agents searched the premises of each petitioner and took custody of pamphlets, circulars and other property known to such agents to be connected with the affairs of "Mankind United" and the offense charged in the indictment (R. 51–53, 57–59, 64, 68, 70–71, 74–75, 76–77, 79–80, 83, 87, 90–91, 94, 96).

Shortly after these arrests, several of the petitioners made a motion in the criminal case to suppress and to return evidence. The motion charged that the Government had violated the Fourth and Fifth Amendments (1) in taking Bell, Burkey, Gloeckler, and Miller into custody without warrants of arrest and without reasonable ground to believe that they had committed a felony and were likely to escape before warrants could be obtained; and (2) in taking "Mankind United" pamphlets and circulars without search warrants. After a full hearing on affidavits and testimony in open court, the motions to suppress were denied on February 13, 1943. *United States* v. *Bell*, 48 F. Supp. 986 (S. D. Cal.). Thereafter, all the petitioners except Gloeckler and Kelso were tried and convicted of conspiracy to commit sedition. Judgment was rendered on May 10, 1943, imposing a fine upon petitioners Askew and Jakeman and sentencing the remaining eight petitioners to imprisonment. An appeal from the convictions is

now pending in the Circuit Court of Appeals for the Ninth Circuit.[3]

On April 7, 1945, petitioners instituted the civil action here involved against Hood and the other F. B. I. agents who made the arrests on December 18, 1942, seeking damages of more than $1,000,000 on account of "false imprisonment and unlawful search and seizure" (R. 30, 2–3).[4] The complaint asserted that the district court had jurisdiction because (1) the case raised a federal question under the Fourth and Fifth Amendments, involving petitioners' right "to be free from deprivation of liberty without due process of law by false and unlawful imprisonment; and * * * to be free from unreasonable searches and seizures;" and (2) the defendants were F. B. I. agents who claimed to have acted under 5 U. S. C. 300, 300a (R. 3–4).[5]

The complaint alleged that respondents had "unlawfully conspired * * * to act beyond their authority" and to abridge petitioners' constitutional rights under the Fourth and Fifth Amendments by (a) searching their homes without search warrants and seizing papers and docu-

[3] Record on appeal in *Bell et al.* v. *United States*, No. 10432, C. C. A. 9.

[4] The complaint was filed on behalf of "Mankind United" as well as by the individual petitioners (R. 2).

[5] Merle Armstrong, a Los Angeles police officer named as defendant, was dropped from the suit by petitioners (R. 8, 171).

ments of petitioners and of "Mankind United," and (b) falsely imprisoning petitioners by arresting some of them without warrants and unreasonably delaying taking all of them before a committing officer (R. 8–9, 10–22).[6]

Respondents moved for a dismissal of the complaint and for summary judgment upon the grounds that (a) as officers of the United States,

[6] The general allegations as to all the petitioners (R. 8–9) were followed by specific allegations as to each one (R. 10–22). The allegations as to petitioner Bell (Division Superintendent of "Mankind United," whose apartments served as the organization's headquarters, R. 4, 10), illustrate those made as to each of the four petitioners apprehended without a warrant of arrest by San Francisco F. B. I. agents: That Bell's residence in San Francisco was broken into on the morning of December 18, 1942, by certain defendants without search or arrest warrants; that Bell was placed under arrest and his premises were searched and left in great disorder; that he was held in custody at his premises until 2:00 P. M. and then taken before a committing officer; that these defendants, at 2:00 P. M., took from his premises 12 cartons of documents and records of "Mankind United" as well as private papers, documents, and cash; and that he was not permitted to see his attorney, to have counsel, or to communicate with anyone (R. 10–12).

The allegations as to petitioner Askew illustrate those made as to the eight petitioners arrested within the Southern District of California under warrants of arrest: That two of the defendants entered her premises at 7:30 A. M., December 18, 1942, and falsely imprisoned her thereon, searched the premises against her will and without a search warrant, removed a large number of documents of "Mankind United" as well as private papers and documents, and held her in the San Diego city jail "until noon Saturday," without arraignment or commitment (R. 12).

they are immune from liability for acts done within the scope of their authority, and (b) the searches and seizures were incidental to lawful arrests and were valid (R. 31–34, 36–37, 40–41, 42–43, 46). After hearings before the district court (R. 156) on the motions, on certain affidavits filed by respondents (R. 43–97) and on counteraffidavits filed by some of the petitioners (R. 97–134), the court, upon its own motion, dismissed the suit for want of jurisdiction on March 20, 1944, pursuant to Section 37 of the Judicial Code, 28 U. S. C. 80 (R. 149–151, 137). The Circuit Court of Appeals for the Ninth Circuit affirmed (R. 179).

ARGUMENT

The district court held that it lacked jurisdiction because petitioners' right to recovery against respondents depended upon establishing that they had acted in a malicious or unlawful manner and had become personally liable, and that the action therefore did not arise "under the Constitution or laws of the United States" within the meaning of Section 24 (1) (a) of the Judicial Code, even though a constitutional right was alleged to have been violated by the alleged trespasses (R. 146–151, 154–156). The court below agreed, ruling that the complaint stated a cause of action in tort against the F. B. I. agents as individual trespassers and not in their official capacities (R. 169, 170, 173), and that no federal law has given jurisdiction over such torts to the federal courts (R. 177).

We submit that these decisions were clearly correct and that no review by this Court is warranted.

1. The sole ground upon which petitioners rest their contention as to original federal jurisdiction is that the case arises "under the Constitution or laws of the United States" within the meaning of Section 24 (1) of the Judicial Code, 28 U. S. C. 41. It is settled, however, that in order to establish jurisdiction under that Section, "a right or immunity created by the Constitution or laws of the United States must be an [essential] element * * * of the plaintiff's cause of action" so that the "right or immunity * * * will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another." *Gully* v. *First National Bank*, 299 U. S. 109, 112–113; see also *Starin* v. *New York*, 115 U. S. 248, 257–258; *Louisville & Nashville R. R.* v. *Mottley*, 211 U. S. 149, 152; *Shulthis* v. *McDougal*, 225 U. S. 561; *First National Bank* v. *Williams*, 252 U. S. 504, 512; *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, 483.

Measured by these standards, the complaint here involved clearly fails to state a case arising "under the Constitution or laws of the United States" within the meaning of Section 24 of the Judicial Code. The respondents are charged, not as officers of the United States, but as individuals allegedly personally liable for wilful and illegal arrests, entries on petitioners' premises, and seizure and de-

tention of petitioners' private property.[7] The liability thus asserted is that of individual trespassers[8] and petitioners' right to sue is derived from the local or common law. *Boyd* v. *United States*, 116 U. S. 616, 625–628; Throop, *Public Officers* (1892), § 724; Mechem, *Public Officers* (1890), § 770, 778.

The averment in the complaint (R. 4) that respondents "claim to have acted under and by vir-

---

[7] Petitioners' complaint in the district court charged a conspiracy among respondents to make unlawful arrests, imprisonments, searches and seizures (R. 8–9 *et seq.*). In the court below petitioners submitted a "Proposed Amended Complaint for Damages for False Imprisonment and Unlawful Search and Seizure by Federal Officers," together with a "Motion to Reverse Judgment, with Instructions" to the district court to grant leave to file the amended complaint (see Appendix following R. 180; Pet. 3, 14–15, 21–22). Petitioners point out that the "Proposed Amended Complaint" eliminates the recital of conspiracy (Pet. 3). However, neither decision below was grounded on any technical point of pleading, and the court below, although it denied petitioners' motion to file the amended complaint (R. 178–179), characterized the allegations of the original complaint as charging "that defendants through the medium of unlawful and unreasonable searches and seizures, have violated" plaintiffs' rights under the Fourth and Fifth Amendments (R. 170). In point of fact, the "Proposed Amendment Complaint" does not entirely eliminate the allegation of conspiracy (Appendix, p. 17, following R. 180) and merely restates the allegations of the original complaint in argumentative style.

[8] *Buck* v. *Colbath*, 3 Wall. 334, 347; *Poindexter* v. *Greenhow*, 114 U. S. 270, 290; *Walker* v. *Collins*, 167 U. S. 57; *Dowling Bros.* v. *Andrews*, 19 F. 2d 961 (C. C. A. 7); *Goldman* v. *American Dealers Service*, 135 F. 2d 398, 400 (C. C. A. 2).

tue of" 5 U. S. C. 300 and 300a * was properly characterized by the court below as "allegations of probable defenses" (R. 178). Similarly, the allegations in the complaint (R. 3, 9) that respondents' conduct violated petitioners' rights under the Fourth and Fifth Amendments do not supply a basis for concluding that this suit for damages arises under the laws or Constitution of the United States within the meaning of Section 24 of the Judicial Code. Unlike suits for injunction, in which on such allegations the federal courts may in certain circumstances take jurisdiction (cf. *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, cited in petition, p. 9, note 7) where protection is sought against direct and immediate invasion of personal or property interests federally protected, the present suit is one for substituted or secondary redress and no federal cause of action has been created. Congress could undoubtedly have done so, as in the Civil Rights Acts; but in the absence of such legislation it has repeatedly been held that actions for damages against federal officers based on alleged abuse of authority may not be maintained under Section 24 of the Judicial Code, *Taylor* v. *DeHart*, 22 F. 2d 206 (W. D. Mo.), dismissed for want of jurisdiction, 274 U. S. 726; *Viles* v. *Symes*, 129 F. 2d 828 (C. C. A. 10), certorari denied, 317 U. S. 633; *Walters* v. *Payne*,

* Authorizing F. B. I. agents to make arrests without warrants in certain circumstances.

292 Fed. 124 (C. C. A. 3), certiorari denied, 263 U. S. 715; *Chaskin* v. *Thompson*, 143 F. 2d 566 (C. C. A. 9); *Dowling Bros.* v. *Andrews*, 19 F. 2d 961 (C. C. A. 7); cf. *Cooper* v. *O'Connor*, 99 F. 2d 135 (App. D. C.), certiorari denied, 305 U. S. 642.

The decisions of this Court relied on by petitioner (Pet. 7–8) are readily distinguishable. Indeed most of them arose prior to 1875, when for the first time the district courts were given general jurisdiction over cases arising under the laws of the United States. *Little* v. *Barreme*, 2 Cranch 170, arose out of a libel in admiralty. *Tracy* v. *Swartwout*, 10 Pet. 80 (decided in 1836, not 1886 as stated in the petition, p. 7) was a case removed from a state court under the familiar provisions permitting removal of suits against officers for acts done under the authority of the revenue laws. *Mitchell* v. *Harmony*, 13 How. 115, was founded upon diversity of citizenship, as the opinion indicates (pp. 136–137). *Belknap* v. *Schild*, 161 U. S. 10, and *Cammeyer* v. *Newton*, 94 U. S. 225, were actions for patent infringement. *Tunstall* v. *Brotherhood*, 323 U. S. 210, arose under a law regulating commerce, the Railway Labor Act, which created rights in favor of the class of which the plaintiff was a member.[10]

[10] Decisions such as *Bock* v. *Perkins*, 139 U. S. 628, and *Howard* v. *United States*, 184 U. S. 676, cited by petitioners as in conflict with the decision below (Pet. 9, 19), have no relation to the issues herein. Such cases involve suits against

2. Even if the rights asserted by petitioners had their origin in the Federal Constitution, the decision below was correct. For although the alleged rights may spring from a federal source, the district courts will not have jurisdiction if the decision in the case turns merely on questions of fact under state or common law, and does not involve the construction or effect of federal law. *Gully* v. *First National Bank*, 299 U. S. 109, 112–113; *Puerto Rico* v. *Russell & Co.*, 288 U. S. 476, 483; *Germania Insurance Co.* v. *Wisconsin*, 119 U. S. 473, 476; *Barnhart* v. *Western Maryland Ry. Co.*, 128 F. 2d 709, 712–714 (C. C. A. 4), certiorari denied, 317 U. S. 671. In such a situation, any question of constitutional or federal law which

---

ministerial officers, marshals, or court clerks in their official capacity, and are generally brought on the officer's bond under statutes specifically authorizing such suit. See *Gay* v. *Ruff*, 292 U. S. 25, 34; *Feibelman* v. *Packard*, 109 U. S. 421. Similarly inapposite are the cases arising on territory held by the Federal Government under its general governmental powers, such as federal prisons or the District of Columbia (*Hunt* v. *Evans*, 10 F. 2d 892 (App. D. C.); *Cooper* v. *O'Connor*, 99 F. 2d 135 (App. D. C.), certiorari denied, 305 U. S. 642) and cases dealing with property in the custody of a federal court, usually brought under specific statutory authorization. *Goldman* v. *American Dealers Service*, 135 F. 2d 398 (C. C. A. 2).

There is, of course, a clear difference in scope between the constitutional judicial clause (Art. III, § 2) and the grant of original jurisdiction to federal courts under Section 24 of the Judicial Code. *Gully* v. *First National Bank*, 299 U. S. at 113; *Gay* v. *Ruff*, *supra*, at 35; *Tennessee v. Union and Planters' Bank*, 152 U. S. 545, 462.

may be "lurking in the background" is insufficient to ground federal jurisdiction. *Gully* v. *First National Bank, supra,* at p. 117.

In the instant case, the hearing on the motions before the court below made it clear that there was no disputed question as to the construction or effect of any constitutional provision or federal statute, and that the sole issue was whether the respondents, not questioning or denying petitioners' legal rights, impinged upon them by acting without probable cause or unreasonably, or by making searches not incident to the arrest.[11]

---

[11] The affidavits filed by respondents in support of their motion to dismiss illustrate the nature of the issues presented. The affidavit of respondent Langdon (R. 43–55) a San Francisco F. B. I. agent, responding to Bell's allegations, states: After receiving official information on December 17, 1942, of Bell's indictment and the issuance of a warrant for his arrest, and the return *non est* made by the United States Marshal at Los Angeles, Langdon and four other F. B. I. agents went to Bell's apartment in San Francisco at 7:30 A. M., December 18, 1942, knocked at the door and requested to be admitted, telling Mrs. Bell that they were federal officers and that a warrant for Bell's arrest was outstanding under the indictment. Mrs. Bell kept the door locked and no response was made from the apartment to repeated knocks on the door, ringing of the doorbell, and telephone calls from the apartment lobby. To prevent the destruction of evidence, the F. B. I. agents, after a final warning, gained entrance by removing a panel in the kitchen door and taking another locked door off its hinges. When they started to force a locked bedroom door, Bell opened it and demanded to see search and arrest warrants. The agents presented their credentials and informed Bell of his indictment, the outstanding arrest warrant, and their power to make a search incident to the arrest. Bell, fully dressed, remained

In these circumstances, the district court properly dismissed the case for want of jurisdiction under the powers granted by Section 37 of the Judicial Code, *supra*, p. 2. *Robinson* v. *Ander-*

---

in the living room with his wife, while the agents gained entrance to the den through another locked door. The den and certain locked closets contained voluminous papers and documents of "Mankind United" and required considerable time to examine, as well as the assistance of additional F. B. I. agents. Confirming fears that Bell would attempt to destroy evidence, the den was in wild disorder when entered by the agents and photographs were taken of it. Bell voluntarily assisted in examining, marking, listing, and packing the "Mankind United" documents and making an inventory of the documents taken, a procedure which occupied the entire period from 8:10 A. M., the time of arrest, until 1:30 P. M., when the F. B. I. agents and Bell left the apartment. While leaving the apartment at approximately 1:30 P. M., Bell's attorney met the F. B. I. agents and was advised that Bell could be located at the City Prison. One agent filed a complaint with the United States Commissioner at 12:10 P. M. and Bell was booked at 1:50 P. M. Bell was shown courteous treatment at all times and acknowledged it. He never requested to be taken before a committing officer.

The affidavit of respondent Sherman (R. 69–72) in response to that of petitioner Askew, showed that he, another defendant and a matron, went to Mrs. Askew's home in San Diego at 7:30 A. M., December 18, 1942. She was shown credentials and read the warrant for her arrest. She stated that she was ready to go but did not want the premises searched without a warrant. Sherman explained his right to make an incidental search and that he wanted "Mankind United" documents. Mrs. Askew furnished him such "Mankind United" papers as he requested and Sherman gave a receipt for the documents. The search took 30 minutes. Mrs. Askew had breakfast, changed her clothes and was booked at 8:55 A. M., December 18, 1942, at the San Diego county jail, under 50 U. S. C. 33.

son, 121 U. S. 522; *Florida Central and Peninsular Railroad Company* v. *Bell,* 176 U. S. 321, 330; *Bullard* v. *Cisco,* 290 U. S. 179, 187–188; *McNutt* v. *General Motors &c. Corp.,* 298 U. S. 178.[12]

CONCLUSION

The decision below is correct and there is no conflict. We submit that the application for a writ of certiorari should be denied.

HAROLD JUDSON,
Acting Solicitor General.
JOHN F. SONNETT,
Acting Head, Claims Division.
DAVID L. KREEGER,
Special Assistant to the Attorney General.
SAMUEL D. SLADE,
Attorney.

OCTOBER 1945.

[12] Petitioners have ample opportunity, outside of an action for damages, to vindicate their constitutional rights and bring respondents "to account at the bar of justice" (Pet. 22). By the motion to suppress evidence in the criminal case (see p. 5, *supra*) and by the presently pending appeal in that case, in which the alleged false arrests and improper searches form a principal ingredient, petitioners have raised and can obtain a determination of the question whether their constitutional rights have been abridged by improper federal action. Cf. *Burdeau* v. *McDowell,* 256 U. S. 465, 475; *Boyd* v. *United States,* 116 U. S. 616. See also Act of August 27, 1935, c. 740, § 201 (49 Stat. 877, 18 U. S. C. 53a), providing fine and imprisonment for unlawful searches by officers or agents of the United States.

U. S. GOVERNMENT PRINTING OFFICE: 1945